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Counsel for Lead Plaintiff Arkansas State Highway Employees Retirement System and Lead Counsel for the Settlement Class

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

MARK ROBERTI, Individually and
on Behalf of All Others Similarly
Situated,

Plaintiff,

V.

OSI SYSTEMS, INC., DEEPAK CHOPRA, ALAN I. EDRICK, and AJAY MEHRA.

Defendants.

Case No.: 2:13-cv-09174-MWF

CLASS ACTION

**LEAD PLAINTIFF'S NOTICE OF
NON-OPPOSITION AND REPLY IN
FURTHER SUPPORT OF: (I) LEAD
PLAINTIFF'S MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT AND PLAN OF
ALLOCATION; AND (II) LEAD
COUNSEL'S MOTION FOR AN
AWARD OF ATTORNEYS' FEES
AND REIMBURSEMENT OF
LITIGATION EXPENSES**

Judge: Hon. Michael W. Fitzgerald
Courtroom: 1600
Date: December 7, 2015
Time: 10:00 a.m.

1 **I. INTRODUCTION**

2 Lead Plaintiff, the Arkansas State Highway Employees Retirement System (“Lead
 3 Plaintiff” or “ASHERS”), respectfully submits this notice of non-opposition and reply in
 4 further support of its motion for final approval of the proposed Settlement and the
 5 proposed Plan of Allocation (ECF No. 84), and Lead Counsel’s motion for an award of
 6 attorneys’ fees and reimbursement of Litigation Expenses (ECF No. 85) (collectively,
 7 the “Motions”).¹ The Settlement Class’ response to the Settlement has been positive.
 8 The deadline for filing objections passed on November 16, 2015, and no objections have
 9 been filed or otherwise received.

10 Pursuant to the Court’s September 2, 2015 Order Preliminarily Approving
 11 Proposed Settlement and Providing for Notice (the “Preliminary Approval Order,” ECF
 12 No. 82), beginning on September 17, 2015, the Claims Administrator mailed more than
 13 35,000 copies of the Court-approved Notice to potential Settlement Class Members and
 14 their nominees. The Notice set out the essential terms of the \$15 million Settlement and
 15 informed potential Settlement Class Members of, among other things, their right, and
 16 deadline to, opt out of the Settlement Class or object to any aspect of the Settlement, the
 17 proposed Plan of Allocation, or Lead Counsel’s request for attorneys’ fees and
 18 reimbursement of Litigation Expenses.

19 Lead Plaintiff filed the Motions on November 2, 2015, pursuant to the Court’s
 20 Preliminary Approval Order. Lead Plaintiff’s motion for final approval of the
 21 Settlement explains the numerous reasons why the Settlement is fair, reasonable and
 22 adequate to the Settlement Class. Likewise, Lead Counsel’s motion for fees and
 23 expenses explains why the fee request for 20% of the Settlement Amount is fair and
 24 reasonable and supported by, among other factors, the result achieved in the face of
 25 significant risks and the contingent nature of the litigation. The Motions are supported

27 28 ¹ All capitalized terms that are not defined herein are defined in the Stipulation and
 Agreement of Settlement dated as of August 20, 2015 (the “Stipulation,” ECF No. 81-1).

1 by detailed sworn declarations of Lead Counsel, Lead Plaintiff, the Claims
 2 Administrator, the expert in support of the Plan of Allocation, and the mediator who
 3 recommended the Settlement, the Honorable Layn R. Phillips (Fmr.). ECF Nos. 84, 85,
 4 86.

5 As set forth in the Notice, the deadline for any objections or requests for exclusion
 6 from the Settlement Class was November 16, 2015. With the passing of that deadline,
 7 and the absence of any objections, the Settlement Class' support for the Settlement, the
 8 Plan of Allocation, and the fee and expense application is beyond question. “[T]he
 9 absence of a large number of objections to a proposed class action settlement raises a
 10 strong presumption that the terms of a proposed class settlement action are favorable to
 11 the class members.” *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1043 (N.D.
 12 Cal. 2008) (citation omitted).

13 In addition, Lead Plaintiff’s expert estimates that more than 85% of the OSI
 14 common stock shares outstanding during the Settlement Class Period were held by
 15 institutional investors. Such sophisticated institutional investors typically possess the
 16 resources and acumen to consider the merits of a proposed class action settlement. The
 17 absence of any objections from this sophisticated group of investors – combined with the
 18 affirmative support from the sophisticated institutional investor Lead Plaintiff ASHERS
 19 – is further evidence of the fairness of the Settlement.

20 Further, only one request for exclusion has been received.² The dearth of
 21 exclusion requests and absence of any objections further support the fairness,
 22 reasonableness and adequacy of the Settlement, and support approval of the Motions.

23 Based on the foregoing and the entire record herein, Lead Plaintiff respectfully
 24 requests that the Court approve the Settlement and Plan of Allocation as fair, reasonable
 25

26 ² The individual who requested exclusion, William Montanez, is listed on Exhibit 1 to
 27 the parties’ agreed-upon form of proposed Judgment submitted herewith. His exclusion
 28 request indicates that he bought, and sold for a profit, a total of 600 shares during the
 Settlement Class Period.

1 and adequate and in the best interests of the Settlement Class, and grant Lead Counsel's
2 application for attorneys' fees and reimbursement of Litigation Expenses.

3 For the Court's convenience, Lead Plaintiff submits herewith the parties' agreed-
4 upon form of proposed Judgment, a proposed order approving the Plan of Allocation,
5 and a proposed order approving Lead Counsel's fee and expense application.

6 Dated: November 30, 2015

Respectfully submitted,

7 BERNSTEIN LITOWITZ BERGER
8 & GROSSMANN LLP

9 /s/ Richard D. Gluck

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